

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., and MOTOROLA
MOBILITY, INC., and GENERAL
INSTRUMENT CORPORATION,

Defendants.

MOTOROLA MOBILITY, INC., and
GENERAL INSTRUMENT CORPORATION,

Plaintiffs/Counterclaim Defendant,

v.

MICROSOFT CORPORATION,

Defendant/Counterclaim Plaintiff.

CASE NO. C10-1823-JLR

DEFENDANTS' NONOPPOSITION TO
MICROSOFT'S 4/20/12 MOTION TO
FILE DOCUMENTS UNDER SEAL

**NOTED ON MOTION CALENDAR:
Friday, May 4, 2012**

DEFENDANTS' NONOPPOSITION TO MICROSOFT'S
4/20/12 MOTION TO FILE DOCUMENTS UNDER SEAL
CASE NO. C10-1823-JLR

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I. INTRODUCTION

Defendants Motorola, Inc. (now Motorola Solutions, Inc.), Motorola Mobility, Inc. and General Instrument Corporation (collectively, "Motorola") do not oppose Microsoft's 04/20/12 Motion to File Documents Under Seal (ECF No. 282) regarding the following documents Microsoft offered in support of Microsoft's March 30, 2012 Motion for Summary Judgment of Breach of Contract (ECF No. 237):

- Exhibits 1, 2 and 6 to the Declaration of Christopher Wion in Support of Microsoft's Motion for Summary Judgment of Breach of Contract ("4/20/12 Wion Declaration"); and
- Limited portions of Microsoft's Reply (ECF No. 283) in Support of Motion for Summary Judgment of Breach of Contract.

II. DUE TO THE POTENTIAL FOR COMPETITIVE HARM, THE INFORMATION AND DOCUMENTS SHOULD BE KEPT UNDER SEAL

In accordance with the instructions in the Court's April 23, 2012 Order to Show Cause (ECF No. 292) ("In the future, should the situation arise that pursuant to the protective order one party must file documents marked confidential under seal, the motion itself or the responsive brief, must contain sufficient supporting evidence to meet the standard for sealing the relevant documents."), Motorola offers the following supporting evidence for these documents:

A. Exhibit 1 to the 4/20/12 Wion Declaration.

Exhibit 1 to the 4/20/12 Wion Declaration is a copy of a license agreement between Motorola Mobility, Inc. and VTech Communications, Inc. As Motorola explained in a previous unopposed Motion to Seal (ECF No. 181), which the Court granted on February 24, 2012 (ECF No. 187), the Motorola Mobility-VTech license agreement is a highly confidential agreement between Motorola Mobility, Inc. and VTech, a non-party to this litigation. Although the agreement indicates that the parties may disclose its existence to third parties, Motorola and VTech have agreed that the terms only be disclosed in a pending litigation subject to a protective order using the highest available and appropriate confidentiality designation. *See* § 9.3(b) of the Agreement. Disclosure of the terms to third parties not covered by the protective order would

1 have the potential to lead to competitive harm. Due to the presence of highly confidential
2 information throughout the license, Exhibit 1 to the 4/20/12 Wion Declaration should be sealed in
3 its entirety.

4 B. Exhibit 2 to the 4/20/12 Wion Declaration.

5 Exhibit 2 to the 4/20/12 Wion Declaration consists of excerpts from the deposition of
6 Motorola employee Timothy M. Kowalski, taken on April 4, 2012, in this matter. Motorola has
7 designated the deposition as Confidential under the terms of the Protective Order entered on
8 July 21, 2011 (ECF No. 72). Mr. Kowalski is the lead intellectual property counsel at Motorola
9 Mobility, Inc., and is responsible for managing Motorola's technology licensing programs.
10 Throughout his testimony, Mr. Kowalski disclosed highly confidential information about
11 Motorola's licenses, licensing history, internal business practices, and confidential
12 communications between the legal departments of Motorola and certain non-parties to this
13 litigation. Disclosure of this information to third parties and other party employees not covered by
14 the protective order would have the potential to lead to competitive harm. Due to the presence of
15 this highly confidential information throughout the transcript, Exhibit 2 to the 4/20/12 Wion
16 Declaration should be sealed in its entirety.

17 C. Exhibit 6 to the 4/20/12 Wion Declaration.

18 Exhibit 6 to the 4/20/12 Wion Declaration consists of confidential communications
19 between Motorola and a non-party regarding patent licensing. This document was produced by
20 that non-party pursuant to a subpoena and has been designated by that non-party as Confidential
21 under the Protective Order. Due to the confidential nature of these communications and the non-
22 party's confidentiality designation, Motorola does not oppose sealing this document in its entirety.

23 III. CONCLUSION

24 Motorola does not oppose Microsoft's 04/20/12 Motion to File Documents Under Seal
25 (ECF No. 282). Nothing herein is intended as a waiver of Defendants' right to contest Microsoft's
26 designation of material as Confidential Business Information in accordance with the terms of the

1 Protective Order entered on July 21, 2011 (ECF No. 72). Defendants expressly reserve the right to
2 do so as the circumstances warrant.

3 DATED this 2nd day of May, 2012.

4 SUMMIT LAW GROUP PLLC

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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 2nd day of May, 2012.

/s/ Marcia A. Ripley

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